



HQDA Office of General Counsel

ETHICS TRAINING 2014

[Contact: usarmy.pentagon.hqda-ogc.mbx.ef@mail.mil](mailto:usarmy.pentagon.hqda-ogc.mbx.ef@mail.mil)



Agenda

- Ethical Decision Making
- Statutory & Regulatory Framework
- 14 Principles of Ethical Conduct
- Conflicts of Interest
- Gifts
 - From Outside Sources
 - Between Employees
- Contractors in the Workplace
- Political Activities





Why should you get advice from an Ethics Counselor?



- **You will receive “Safe harbor”**
 - If an employee seeks advice before taking action, makes a full and accurate disclosure of the facts and circumstances and acts in good faith reliance upon the advice of the Ethics Counselor, administrative disciplinary action for violating the Standards of Ethical Conduct will not be taken against the employee if the ethics advice is later determined to be incorrect
- **The Fine Print:**
 - Ethics Attorneys always remain representatives of the Federal Government; ethics advice does not create an attorney-client relationship
 - No Safe Harbor for statutory/criminal provisions.



Contact OGC E&F

Phone: 703-695-4296

E-Mail: usarmy.pentagon.hqda-ogc.mbx.ef@mail.mil



Mark Vetter

- Seeking/Post Employment
- Official Speaking
- Conferences
- AUSA
- Support to Non-Federal Entities

John Kent

- Transition
- Conflicts of Interest
- Financial Disclosure
- Training
- Fundraising & CFC
- Outside Activities
(Teaching, Speaking, Writing)

Susan Sutherland

- Travel
- GO Nominations
- Contractor Issues
- Political Activities
- Gifts
- CASA Program
- FACA s (ASB & ANCAC)

Mark Vetter (Financial Disclosure Mgmt (FDM) System)

- Electronic filing of OGE 278 and OGE 450

OTJAG

Art Kaff (OTJAG Ethics)

- All ethics matters for HQDA ARSTAF
- Call 571-256-2907



Statutes

- **18 U.S.C. § 201 – Bribery & Illegal Gratuities**
 - Prohibits giving or receiving something of value in exchange for an official act (bribery – “quid pro quo”) or as a reward for some future act that the public official will take/has taken (gratuities).
- **18 U.S.C. § 203 – Paid Representation of NFE (Current Employee)**
 - Prohibits employee from receiving compensation derived from representational services of others in matters before the executive branch or the courts.
- **18 U.S.C. § 205 – Unpaid Representation of NFE (Current Employee)**
 - Prohibits employee from representing anyone other than themselves on any matter before the executive branch or any court, if the United States is a party or has an interest, even if not compensated.
- **18 U.S.C. § 207 – Post-Government Employment Restrictions**
 - Prohibits former employees from engaging in certain activities on behalf of persons or entities after they leave Government service.
- **18 U.S.C. § 208 – Conflicts of Interest**
 - Prohibits employee from participating in a particular Government matter that will affect his own financial interests or interests imputed to him.
- **18 U.S.C. § 209 – Supplementation of Salary**
 - Prohibits employees from being paid by someone other than the U.S. for doing



Rules

- **Standards of Conduct** – 5 CFR 2635 - 2641
- Issued by OGE & apply to all Executive Branch.

Part A: General Provisions

Part E: Impartiality

Part B: Gifts from Outside Sources

Part F: Seeking Other Employment

Part C: Gifts Between Employees

Part G: Misuse of Position

Part D: Conflicting Financial
Interests

Part H: Outside Activities

- **Joint Ethics Regulation (JER)** – Issued by DoD & applies to all DoD and Military Services

Ch. 1: General Information

Ch. 7: Financial & Employment

Ch. 2 : Standards of Ethical Conduct

Disclosures

Ch. 3 : Activities with NFEs

Ch. 8 : Seeking Other Employment

Ch. 4 : Travel Benefits

Ch. 9 : Post-Government Service
Employment

Ch. 5 : Conflicts of Interest

Ch. 10 : Enforcement

Ch. 6 : Political Activities

Ch. 11: Training

Ch. 12 : Ethical Conduct



Our Role

We are here to help you navigate the rules

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But, ethics is more than just rules – it's a culture!



Ethical Decision Making

Aspects of Ethical Decision Making:

- Law & Rules – **“Can I take an action?”**
 - Ethics opinion will provide legal conclusions
 - Interpretive guidance for legal nuances
- Values & Judgment – **“Should I take an action?”**
 - Ethics opinion may provide considerations or risk analysis
 - Requires subjective judgment to determine propriety of the proposed action
 - Non-legal considerations:
 - **Public Perception / Optics**
 - Potential Congressional / Media interest





Poor Decision Making

Military brass behaving badly

Craig Whitlock, Washington Post, January 26, 2014

“Files detail a spate of misconduct dogging armed forces.”

Hagel ‘Deeply Troubled’ By Ethics Scandals In US Military

Andrew Tilghman, Defense News, February 5, 2014

“US Defense Secretary Chuck Hagel thinks there may be a ‘systemic’ ethics crisis inside the military, his top spokesman said Wednesday.”

The Number of U.S. Soldiers Forced Out of the Army for Crimes or Misconduct Has Soared

Lolita C. Baldor, Huffington Post, February 15, 2014

“The number of U.S. soldiers forced out of the army because of crimes or misconduct has soared in the past several years as the military emerges from a decade of war that put a greater focus on battle competence than on character.”



14 Principles of Ethical Conduct

Executive Order 12674

1. Place public service above private gain
2. **Financial interests cannot conflict with official duties**
3. Do not use non-public information for private gain
4. **No gifts from prohibited sources**
5. Employees must put forth honest effort in performance of duties
6. No unauthorized promises purporting to bind the government
7. Do not use public office for private gain
8. **Act impartially and no preferential treatment**
9. Protect and conserve government property and only use it for authorized purposes
10. **No outside employment or job hunting that conflicts with Federal job**
11. Obligated to disclose waste, fraud, and abuse
12. Satisfy financial obligations in good faith
13. Uphold EEO laws and regulations
14. **Avoid appearance of unethical conduct/violating the law or ethics regulations**



Conflicts of Interest





Conflicts of Interest

Statutory (18 U.S.C. § 208)

- Prohibits employees from:
 1. Participating **personally and substantially**;
 2. In a **particular matter**;
 3. In which the employee has an **actual or imputed financial interest**.
- Definitions:
 - **Personal & Substantial** = decision, recommendation, advice, investigation, coordination. Generally anything other than ministerial functions.
 - **Particular Matter** = a matter that involves deliberation, decision or action that is focused on the interests of specific persons or a discrete and identifiable class of persons (contract, claim, controversy)
 - **Imputed Interests** = Financial interests of
 - Spouse
 - Minor child
 - Partner
 - Organization in which the employee is an officer or employee
 - Entity with whom the employee is negotiating for employment



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Conflicts of Interest

Regulatory - (5 C.F.R. § 2635.502)

- **“Impartiality Rule”** - Employee may not participate in a particular matter where the employee knows:
 1. The matter is likely to have a direct and predictable effect on the financial interests of a member of his household;
 - OR*
 2. A person with whom he has a **covered relationship** is or represents a party to the matter and the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality.
- **“Covered relationship”** includes person/entity :
 - With whom employee has or seeks a business, contractual or financial relationship (other than routine consumer transaction);
 - Who are members of household or relatives with a close personal relationship;
 - For whom employee’s spouse, parent or dependent child serves as an officer, director, trustee, general partner agent, attorney, consultant, contractor or employee;
 - Who are former business partners, clients, and employers (within last year or last two years if received extraordinary severance payment);



Conflicts of Interest

Financial Disclosure Reports

- **IDENTIFYING CONFLICTS:** One means of identifying potential conflicts of interest is through the OGE Form 450 (Confidential) and OGE 278 (Public) Financial Disclosure Reports, which are completed by certain designated personnel.
 - Supervisors must review for conflicts - See training at: <https://www.fdm.army.mil/supervisors.html>
 - Reviews must be conducted promptly to enable certification by ethics officials within OGE deadlines.
- **Filing Deadlines:**
 - OGE 450: 30 Days (New) / February 15 (Annual)
 - Changes in work assignment or family/financial status
 - OGE 278: 30 Days (New) / May 15 (Annual) / 30 Days (Termination)
 - OGE 278-T Periodic Transaction Reports 30 / 45 Day Rule
- **FDM:** The Army uses the Financial Disclosure Management System (FDM) to electronically complete all Financial Disclosure Reports (*except 278-T*).



Conflicts of Interest

OGE 278 Filers

- **Personal Mortgage** – GO/FO and PAS officials must report personal residence mortgage under liabilities
 - Other public filers - only report if generates rent
- **Periodic Transaction Reports (278-T)** – All 278 filers must report purchase, sale, or exchange greater than \$1000 of:
 - ✓ Stocks
 - ✓ Bonds
 - ✓ Commodities futures
 - ✓ Any other form of security
 - X **NOT** Excepted Investment Funds
 - X **NOT** Real Estate

Must report for spouse, dependent child, and any security where employee is owner or partial owner. Due w/in 30 days of actual notice or 45 days of transaction.

- **3-Day Employment Negotiation Notice** – All OGE 278 filers must submit a “notification statement” within 3 days of negotiation with any NFE for future employment OR compensation. Template is available. Includes recusal provisions.



Conflicts of Interest

- **ADDRESSING CONFLICTS:** Supervisors MUST promptly review employees' financial disclosure for potential conflicts and determine whether corrective action is needed. Corrective actions are:
 1. Recusal/Disqualification - Provided mission/resources permit and with approval of your supervisor, you may recuse yourself from participation in the matter and your supervisor may assign the matter to another employee;
 2. Divestiture - You may sell or otherwise dispose of the conflicting financial interest;
 - If you are directed to sell you may be eligible for a Certificate of Divestiture from the Office of Government Ethics, but you must request it **before** the sale. Contact your ethics counsel for details.
 3. Waiver - In rare circumstances, you may be authorized continued participation. Before granted, all other remedies should be examined and determined inadequate or inappropriate. Requires DAEO recommendation and approval by the appointing official.
- **De Minimis Exceptions:** Permit employees to continue to hold certain conflicting financial interests valued below a stated threshold. (5 C.F.R. § 2640.201, et. Seq.)



Conflicts of Interest

SCENARIO: You are a Government employee in the G-1. Your spouse works for a relatively large employee owned manpower contractor and has significant stock interests in the company. The contractor proposes to place your spouse on-site within your organization, which thrills your boss since he knows she is an excellent resource and very efficient, an important factor in a time and materials contract such as this one. He doesn't see any issues since your spouse will be a contractor, not an employee, and all you will do is determine which work will be performed by the contractor a **?!?** work will be performed in house.



*Whaaaaat?!?
Are you serious?!?*

QUESTION: Is this arrangement acceptable?

Please choose the best answer:

1. Are you kidding? We go to work to get away from each other!
2. Yes, since you won't be supervising your spouse as an employee.
3. No, this is a potential conflict of interest and violates

Reflection:

Employees must maintain integrity and impartiality in the performance of their duties. Yet, employees may have close friends and relatives working within the defense industry, particularly in the D.C. area. So, the rules must balance the need for impartiality and public trust against the rights of the individual employee to maintain their personal relationships.



Conflicts of Interest

Number 3
--Correct



DISCUSSION: Employees may not participate personally and substantially in a “particular matter” that directly and predictably affects their financial interests, or those of a spouse or minor child. Additionally, employees must disqualify themselves from participating in a particular matter where they have covered relationship with a party to the matter and their impartiality is likely to be questioned. And, finally, employees have a duty to avoid the appearance of impropriety.

Here, your spouse has a significant financial interest in the company that is imputed to you and the company’s interests will be directly impacted by how much work they receive under a time and materials contract. Additionally, you have a covered relationship with your spouse’s employer.

Under these circumstances it is likely your impartiality would be questioned, and at a minimum, there is an appearance of impropriety in having you direct work to your



Gifts



Do
11/11/2011



Gifts From Outside Sources

From Prohibited Sources or Given Because of Official Position

- **General Rule:** Employees shall not solicit or accept a gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.
- **Definition:** A "gift" may be any tangible or intangible item of value, such as: Cash, service, entertainment, hospitality, travel or travel-related expenses; discount, loan, or forbearance.
- **Exclusions:** The following are not considered "gifts"
 - Greeting cards & plaques
 - Modest refreshments served as other than part of a meal (Coffee, donuts, etc.)
 - Benefits/discounts available to the public, Government employees, or all military
 - Gifts to the Government



Gifts From Outside Sources

From Prohibited Sources or Given Because of Official Position

- ***Exceptions: Most Common -***
 1. Gifts of \$20 or Less. Unsolicited gifts with a market value of \$20 or less per source, per occasion, so long as the total value of all gifts received from a single source during a calendar year does not exceed \$50.
 2. Gifts Based on a Personal Relationship.
 3. Speaking Engagements
 - On the day of participation
 - Can include conference fees, food, instructions & materials, other items integral to the event.
 4. Widely Attended Gatherings (WAGs)
 - Large number of attendees
 - Diverse viewpoints
 - Opportunity to exchange ideas
 - Supervisor or agency designee determination required finding attendance will further agency interests
 - Ethics counsel can serve as agency designee for high level officials or blanket determinations
 - Supervisor determinations require consultation with ethics counsel
 - Attendance is in personal capacity & value may need to be reported on Financial Disclosure Report.
 5. Social Invitations from Other Than Prohibited Sources



Gifts From Outside Sources

Foreign Government



- **Tangible Gifts from Foreign Government**
 - At or below Minimal Value (currently \$375) - may accept & retain.
 - Filers must report on their OGE Form 278/OGE Form 450.
 - Aggregate value of all gifts presented at same time by representatives of the same government.
 - Above Minimal Value –
 - SHALL be refused & donor advised that U.S. law prohibits acceptance whenever possible UNLESS it appears refusal may offend/embarrass donor or adversely affect U.S. foreign relations (DoDD 1005.13 §4.4)
 - If unable to refuse, may be accepted on behalf of the U.S. with approval of OAA and turned in within 60 days.



Gifts Between Employees



General Rule: Employees shall not:

1. Give a gift or make a donation toward a gift for an official superior or solicit a contribution from another employee for a gift to either his own official superior or that of another; or
2. Accept a gift from a lower-paid employee, unless the donor and recipient are personal friends or are not in an official superior-subordinate relationship



Exceptions:

1. Unsolicited gifts on traditional gift giving occasions, such as holidays or birthdays, valued at \$10 or less (no cash).
2. Unsolicited gifts on special infrequent occasions:
 - a. Wedding, illness, birth of a child
 - b. Occasion terminates the official superior – subordinate relationship (e.g., transfer, retirement, resignation), but not promotion
3. Food and refreshments that will be consumed at the office
4. Personal hospitality (e.g. meals) at someone's home
5. Hostess gifts in connection with the receipt of personal hospitality



Gifts Between Employees

Group Gifts:

1. Traditional gift giving occasions: Total value of gift limited to \$10 if group includes a subordinate.
2. Special infrequent occasions:
 - a. Total value of gift limited to \$300 if group includes a subordinate.
 - a. If same person contributes to more than one group, the gifts are aggregated for purposes of reaching the \$300.
 - b. Solicitations may ask for no more than \$10 from donors.
 - b. If contractor employee contributes, value of group gift is limited to \$20. Contractor employees may not be solicited.

* Greeting cards and refreshments are not included in gift value.



Gifts



Reflection:

It's natural for employees to want to provide a nice send off to a well-liked and respected leader. But, limitations are necessary to protect those who cannot or do not wish to contribute and avoid any perception of using public office for private gain. These events can easily turn into a competition between

SCENARIO: You are the assistant to a very senior retiring official, who was very well liked by staff throughout the organization. You know that everyone will want to contribute to give him the perfect gift to be presented at the retirement reception. The gift you've selected will cost \$450, so you send an e-mail solicitation asking for a \$10 donation from each person in the office. That should give you more than enough for the gift, a card, and refreshments to be served at the reception.

QUESTION: Have you done anything wrong?

Please choose the best answer:

1. No, because you only solicited \$10 per person.
2. Yes, because the value of the gift exceeds \$300.
3. Of course not – it's not like you bought him a Rolex and if people didn't like the guy they wouldn't be contributing.



Gifts

Number 2— Correct

DISCUSSION: On special infrequent occasions, such as retirement, employees may give, and supervisors may accept, a gift whose value is appropriate to the occasion. Under the JER, gifts from a group that includes a subordinate are limited in value to \$300 and only \$10 per donor may be solicited. Greeting cards and refreshments are not included in the value of the gift.

At \$450, this gift exceeds the \$300 limit. However, assuming that you find a gift that falls within the \$300 limit, you may use excess funds collected to cover the cost of a greeting card and refreshments to be shared with members of the organization at the reception.



Note that donations must be completely voluntary and solicitations should be conducted by a junior member of the organization to avoid perceived pressure or coercion.



Contractors in the Workplace





Contractors in the Workplace



- **Awards:**

- Fiscal law and DoD policy prohibits giving awards/coins/recognition to contractors or their employees.

- **Letters of Recommendation:**

- Endorsement rules prohibit use of official position, title or authority, including official stationary and “star notes,” to commend the performance of a contractor or their employee.
- An employee with authority over the contract may, in coordination with the contracting officer, make a simple factual statement that the contractor’s work satisfied the Government’s requirements.

- **Gifts:**

- From contractor employee to federal employee – see previous slides.
- From federal employee to contractor – Federal ethics rules do not apply, but contractor may have internal restrictions

- **Non-Public Information:**

- Federal employees may not allow the improper use of nonpublic information to further the private interests of another person/entity. Disclosure may be subject to criminal



Hatch Act - Political Activities





Hatch Act - Political Activities



DoD Civilians: The Hatch Act restricts partisan political activities of civilian DoD employees and DoD policy further restricts the partisan political activities of certain political appointees.

Military Personnel: Covered by DoDD 1344.10, *Political Activities by Members of the Armed Forces*



Hatch Act - Political Activities

Definitions

Partisan Political Activity = any activity directed toward the **success or failure** of:

- a **political party**;
- a **candidate for partisan political office** (beginning with fundraising or declaration of candidacy); OR
- a partisan political group

Non-Partisan Political Activity = Any activity not associated with the success or failure of a political party or candidate for an political office.

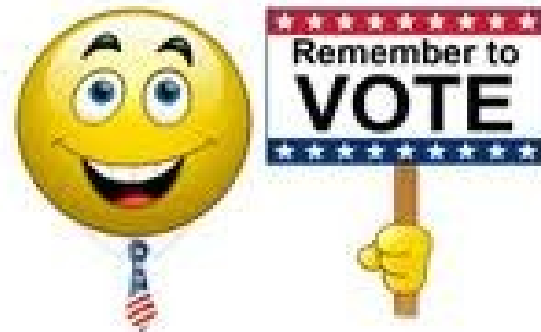




Hatch Act - Political Activities

What You Can Do

All Federal employees **may**:



- ✓ Register and vote
- ✓ Make a financial contribution to a campaign
- ✓ Be a candidate for non-partisan office
- ✓ Join political clubs or parties
- ✓ Express personal opinions about candidates and issues
- ✓ Sign nominating petitions
- ✓ Participate in nonpartisan activities



Hatch Act - Political Activities



What You Cannot Do

Federal employees **may not**:

- X Use official authority or influence to interfere with an election
- X Run for partisan office
- X Solicit or discourage political activity of anyone with business before their agency
- X Solicit or receive political contributions
- X Be candidates for public office in partisan elections
- X **Engage in political activity while:**
 - x On duty
 - x **In a government office**
 - x Wearing an official uniform
 - x Using a government vehicle



Hatch Act - Political Activities

- Further restricted employees (career SES) **may not**:
 - X Engage in partisan political campaigning and political management, such as:
 - x Volunteer for a partisan political campaign
 - x Make campaign speeches
 - x Distribute campaign literature
 - x Organize a political rally, meeting, or fundraiser
 - x Hold political party office or be a party delegate
 - x Participate in partisan voter registration drives
 - x Circulate nominating petitions



Key: No activity in concert with a political party or candidate

Note: **Per DoD policy, non-career SES's and PAS's may not** a) serve as delegates, alternates, or proxies to a political party convention, b) address a political convention, caucus, or rally, or c) attend a Presidential nominating convention (except for non-career SES officials, who may attend solely as spectators)



Hatch Act - Political Activities



Pictures in the Workplace



- Current Officials as Candidates
 - Once a current official is a declared candidate for election/re-election, the Hatch Act prohibits Federal employees from displaying that person's picture in the Federal work space unless an exception applies
- Official Photographs Exception – permits display of an official portrait photo or photo of the person conducting official business, but:
 - Pictures must be displayed in a traditional size and locations and not be altered
 - Pictures distributed by the individual's campaign or a partisan organization are not official even if they depict the individual performing an official act
 - Pictures downloaded from the Internet, clipped from magazines or newspapers, screen savers, and life-size cutouts are not official photographs for purposes of this exception



Hatch Act - Political Activities

Pictures in the Workplace

- Personal Photographs Exception - permits employees to display a personal photograph in which a candidate appears **if all** of the following apply:
 - The photograph was on display in advance of the election season
 - The employee or a family member is in the photograph with the candidate
 - The photograph is personal (*i.e.*, the employee has a personal relationship with the candidate and the photograph is taken at a personal event, e.g., a wedding, and not at a campaign event or some other type of partisan political event)
 - The circumstances clearly indicate that the employee does not have a political purpose for displaying the photograph, i.e., promoting or opposing a political party or a candidate for partisan political office





Hatch Act - Political Activities

Violations and Penalties

- A DAC employee ran in a partisan election despite numerous warnings that doing so was in violation of the Hatch Act. OSC also found that he solicited contributions for his campaign.

Result: 180-day unpaid suspension.



- A Navy civilian employee sent seven emails directed at the failure of President Obama's 2012 campaign to fellow federal employees. She sent the partisan emails while on duty and in a federal workplace.

Result: 5 day unpaid suspension.

- A contracting officer with USACE sent a highly partisan email to dozens of people, urging everyone to vote



Political Activities



- Federal employee posted dozens of tweets about partisan elections and candidates while on duty. Examples of these tweets were:
 - *"you don't have to live in ward5 to help put KenyanforWard5 over \$10K tonight -- only \$275 away. please help"*
 - *"goes w/o saying, plz, tell all you know in the ward to not be apathetic 5/15 & vote for better candidate *cough, kenyan, cough*"*

Result: Employee resigned in lieu of prosecution.
- Tax specialist promoted her partisan political views to a taxpayer she was assisting during the 2012 Presidential election season by telling client she was "for" the Democrats because "Republicans already [sic] trying to cap my pension and . . . they're going to take women back 40 years." She continued to explain that her mom always said, "'If you vote for a Republican, the rich are going to get richer and the poor are going to get poorer.'" The employee told the taxpayer, "I'm not supposed to voice my opinion. so you didn't hear me saying



Hatch Act - Political Fundraising

- IRS employee in Dallas Taxpayer Assistance Center wore pro-Obama political stickers, buttons, and clothing to work and displaying pro-Obama screensavers on their IRS computers. However, since these items were commonplace throughout the office, OSC issued cautionary guidance to all IRS employees in the Taxpayer Assistance Center that they cannot wear or display any items advocating for or against a political party, partisan political group, or partisan candidate in the workplace.
- Attorney at the Federal Election Commission posted dozens of partisan political tweets, including many soliciting campaign contributions to President Obama's 2012 reelection campaign and other political campaigns. The employee also participated in a Huffington Post Live internet broadcast via webcam from an FEC facility, criticizing the Republican Party and then-Presidential candidate Mitt Romney.

Result: Resigned and barred from Fed employment for 2



Hatch Act - Political Activities



- AF employee sent numerous partisan political e-mails using a government account to a list of as many as 60 federal employees. The employee sent each e-mail while on duty in the months leading up to the 2012 election. All of the e-mails were in opposition to then-candidate President Barack Obama and the Democratic Party. AF colleagues complained to management about the employee's constant dissemination of offensive partisan political information while on duty. The employee continued to send political e-mails that conveyed a negative view of President Obama and his campaign even after being informed that OSC was investigating the conduct.

Result: 40-day unpaid suspension.